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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

944-001.038-1

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on 10/27/2006Signature Kelly PuglioTyped or printed name Kelly Puglio

Application Number

10/023,456

Filed

October 30, 2001

First Named Inventor

Jose Costa Requena

Art Unit

2154

Examiner

Mohammad A. Siddiqi

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record. 56,885

Registration number _____

Signature

Shiming Wu

Typed or printed name

(203) 261-1234

Telephone number

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of 5 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Jose Costa Requena

Application No.: 10/023,456

Filed: October 30, 2001

Title: System and Methods for Using an Application Layer Control Protocol Transporting Spatial Location Information Pertaining to Devices Connected to Wired and Wireless Internet Protocol Networks

Group Art Unit: 2154

Examiner: Siddiqi, Mohammad A.

REQUEST FOR A PRE-APPEAL CONFERENCE

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office Action mailed December 27, 2005 and Advisory Action mailed on June 2, 2006, a Notice of Appeal is filed herewith. Applicant respectfully requests a pre-appeal conference being held for the instant application and the following reasons for the patentability of the claims being considered.

REMARKS

The application has claims 17-21 pending. The application is published as US 2002/0126701 A1. The Office rejected Claims 17, 18 and 21 under 35 USC 102(e) as being anticipated by Dalal *et al* (U.S. 2002/0065894, hereinafter Dalal), claims 19 and 20 under 35 USC 103(a) as being unpatentable over Dalal in view of "Official Notice."

Claim 17 is to a system that includes a central server and a presence server. The central server, in response to an invitation message from an inviting user to exchange content with an invited user who is registered with the presence server, provides a presence query to the presence server. The presence server, in response to the presence query, provides presence information relating to the invited user. The central server then decides whether the content of the inviting user is sent to the invited user, is stored or is refused based on the presence information. Claim 17 also recites that the presence information pertains to a spatial location of the invited user.

Claim 17 recites:

17. (Previously presented) System, comprising:
 - a central server, responsive to an invitation message from an inviting user to exchange content with an invited user, for providing a presence query; and
 - a presence server, responsive to said presence query, for providing presence information relating to a registered user,
wherein said central server is responsive to said presence information relating to said invited user registered at said presence server, for use in deciding said content is sent to said invited user, stored or refused, wherein said presence query and invitation message are communicated according to an application layer control protocol and wherein said information relating to presence pertains to a spatial location of said registered user.

The term of "a spatial location of the invited user" is explained in depth in the disclosure of the present application. It relates to a geographical point that identifies the location of a mobile device or a user at a time period. In particular, in paragraph [0176] of the published application, it is disclosed that location information may include coordinates and/or Cell-Id of the mobile device at each moment.

Applicant respectfully submits that it is proper and necessary for the Office to look to the specification to interpret "spatial location." The Federal Circuit, in *Phillips vs. AWH Corp.*, 415 F.3d 1303, 75 USPQ.2d 1321 (Fed. Cir. 2005), an *en banc* decision, explained again that:

[T]he specification is always highly relevant to the claim construction analysis.
Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

The court further explained:

That starting point [for understanding a claim term] is based on the well-settled understanding that inventors are typically persons skilled in the field of the invention and that patents are addressed to and intended to be read by others of skill in the pertinent art. ... Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.

Claim 17 is different from Dalal in that the presence information in Dalal does not include a spatial location of the invited user. In fact, Dalal does not mention anything about spatial location. Dalal discloses only a system that indicates whether a user is reachable and how the user is reachable (by email, by page, etc.), not a system that indicates a spatial location of a user (or a user terminal). The user could be anywhere.

The Office, in rejecting claim 17, cites paragraphs [0005-0010] and paragraph [0016] of Dalal as disclosing a spatial location. In fact though, in paragraphs [0005-0010], Dalal teaches that a user, while away from a desktop computer, can use instant message services with other devices, such as pagers, cell-phones and PDAs. However, it does not disclose how the user's spatial location information (e.g. coordinates) is determined by the server and transmitted as a part of the presence information of the user. At paragraph [0016], Dalal teaches that the presence information of a user may include a local presence state and a global presence state, but neither the local presence state nor the global presence state contains information about the spatial location of the user. The example mentioned by the Examiner, "John is online," does not indicate the location of John, only that John is currently logged on.

The word "spatial" in claim 17 clearly conveys the idea that the presence information contains information relating to or having the character of space that is of course founded on measurements of length or distance. As pointed out in the specification, this is geographical. The present application is replete with references to spatial location and some of the references mentioned in the specification describe this idea even more. For instance, the common spatial location data set as disclosed in the specification spells out that the elements of such a data set include coordinates expressed in latitude, longitude, and optional altitude using WGS-84 data. The specification contemplates making latitude and longitude mandatory and includes various

accuracy and time features as well, along with direction, course, orientation, etc. The parameters of these various pieces of data are set forth in a spatial location protocol as described in the specification.

The Examiner's interpretation of "spatial location" (i.e. various devices and "John is online", see page 3, lines 10-11 of the Advisory Action) would render the term devoid of meaning because it is too broad an interpretation and not justified by either the claim itself or by the specification.

The present invention makes it possible to achieve location based services by combining presence and spatial location of a user by enabling the exchange of content based on both of these properties. Dalal fails to teach or suggest anything like providing the spatial location of a user terminal, let alone in a message from a presence server to a central server as required by claim 17. Therefore, applicant believes that the rejection of claim 17 is improper.

Based on the above reasons, it is believed that claim 17, as it currently stands, is patentable. Claims 18-21, being dependent from claim 17, are also patentable at least for the same reasons as above. Applicant respectfully requests the rejections of these claims be reconsidered and withdrawn.

Conclusion

In view of the foregoing, the applicant respectfully requests that the rejections be reconsidered and withdrawn. Applicant's agent would appreciate a thorough review of the present application and is prepared to discuss further if anything presented herein is unclear or unpersuasive.

Respectfully submitted,



Shiming Wu

Agent for the Applicant
Registration No. 56,885

June 27, 2006
Date
Ware, Fressola, Van Der Sluys & Adolphson LLP
755 Main Street, P.O. Box 224
Monroe, CT 06468-0224
Tel: (203) 261-1234
Cust. No.: 004955